



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

December 23, 1953.

Hon. Homer Garrison, Jr.
Director, Texas Department
of Public Safety
Camp Mabry
Austin, Texas

Opinion No. S-117

Re: Applicability of Article
6701c-1, V.C.S., to "com-
mercial vehicles" and
"truck-tractors" operated
over the highways of Texas
by persons other than the
registered vehicle owner.

Dear Sir:

Your request for the opinion of this office regard-
ing the applicability of Senate Bill 122, Acts of the 53rd
Legislature, to various classifications of motor vehicle op-
erations contains the following specific questions:

"1. Are we correct in our interpretation
that Senate Bill 122 is applicable to all com-
mercial motor vehicles and truck tractors operated
over the highways of Texas, except those expressly
exempt by the terms of the act, under lease by a
person or persons who do not operate for hire and
whose operations are neither subject to or regulated
by the provisions of the Texas Motor Carrier Law or
Part II of the Interstate Commerce Act?

"2. Are we correct in our interpretation
that Senate Bill 122 is applicable to all com-
mercial motor vehicles and truck tractors
operated over the highways of Texas under lease
by a person or persons (lessees) who are lawfully
engaged in for hire transportation pursuant to
authority issued to such person or persons by
either the Railroad Commission of Texas or the
Interstate Commerce Commission or both?

"3. Are we correct in our interpretation
that Senate Bill 122 is applicable to all com-
mercial motor vehicles and truck tractors op-
erated over the highways of Texas by a person
or persons in the for hire transportation of
exempt commodities under Part II of the Inter-
state Commerce Act?"

Senate Bill 122 of the 53rd Legislature was enacted as Chapter 209, Acts of the 53rd Legislature, 1953, and is codified as Article 6701c-1, Vernon's Civil Statutes.

Article 6701c-1 applies to the operation of commercial motor vehicles and truck-tractors over the highways of Texas by any person other than the registered owner thereof, or his agent, servant or employee under his direct supervision and control, but excepts from its application the movements of specific commodities set forth in Section 2 therein, and excepts movements of such character as are defined in Section 2, Subsections (a), (b) and (c) and Section 8.

The Act further provides that if such vehicle is operated over the highways of Texas by one other than the registered owner, or someone under his direction and supervision, then there must be filed with the Department of Public Safety a copy of the lease or agreement under which such vehicle is operated (Sec. 2). Further, a copy of said lease or agreement and a copy of the letter of transmittal to the Department of Public Safety showing the date said lease was transmitted to the Department must be kept in the cab of such vehicle (Sec. 2), and there must be posted on the side of the vehicle the name and address of the person or persons operating the vehicle, or for whose account and benefit it is being operated (Sec. 6).

Section 1 defines the terms "commercial motor vehicle" and "truck-tractor" for the purposes of this Act. It is apparent that these definitions make no distinction as to the character of operations to be performed by said vehicles, and no such distinction appears within the Act. We thus conclude that Article 6701c-1 is intended to apply to operations of commercial motor vehicles and truck-tractors, except to the operations therein specifically exempted, when the operator thereof is not the registered owner of such vehicle, or his agent, servant or employee, regardless of the character of the operation as being intrastate or interstate, regulated or non-regulated, private or for hire.

It is well established that the highways of the State are public property. Stephenson v. Binford, 287 U.S. 251 (1932); New Way Lumber Co. v. Smith, 128 Tex. 173, 96 S.W. 2d 294 (1932). That the State, under its police power, may prescribe reasonable regulations for the use of its public highways in the interest of public safety and highway conservation is equally well established. Lloyd A. Fry Roofing

Co. v. Wood, 344 U.S. 157 (1952); McDonald v. Thompson, 305 U.S. 263 (1938); Sproles v. Binford, 286 U.S. 352 (1932); Morris v. Duby, 274 U.S. 143 (1927); Railroad Commission of Texas v. Querner, 150 Tex. 490, 242 S.W.2d 166 (1951); Ex Parte Truelock, 140 S.W. 2d 167 (Tex.Crim. 1940).

In Stephenson v. Binford, supra, the United States Supreme Court announced the following criterion in passing upon the validity of State legislation enacted pursuant to the State's police powers over its highways:

"The assailed provisions, in this view, are not ends in themselves, but means to the legitimate end of conserving the highways. The extent to which, as means, they conduce to that end, the degree of their efficiency, the closeness of their relation to the end sought to be attained, are matters addressed to the judgment of the legislature, and not to that of the courts. It is enough if it can be seen that in any degree, or under any reasonably conceivable circumstances, there is an actual relation between the means and the end."

We interpret Article 6701c-1 as being designed to aid in the enforcement of existing police, welfare and safety laws applicable to the operation of commercial vehicles and truck-tractors over the highways of this State. Under this interpretation we consider this Act to be within the test announced in Stephenson v. Binford.

Returning to your three specific classifications of motor carrier operations, we consider to which operations the State's police power may validly extend.

Unquestionably the State has the power to regulate the handling of intrastate commerce over its highways. Railroad Commission of Texas v. Querner, supra; Eichholz v. Public Service Commission of Missouri, 306 U.S. 268 (1939); Continental Baking Co. v. Woodring, supra.

A state may also, under its police power, prescribe certain reasonable and appropriate regulations applicable to interstate commerce. In Morris v. Duby, supra, the Court declared:

"In the absence of national legislation especially covering the subject matter of

interstate commerce, the state may rightfully prescribe uniform regulations adopted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens."

For decisions to the same effect, see: McDonald v. Thompson, supra; Sproles v. Binford, supra; Railroad Commission of Texas v. Querner, supra; Ex Parte Truelock, supra.

A very recent case, Lloyd A. Fry Roofing Co. v. Wood, 344 U.S. 157 (1952), further defines the scope of State authority over interstate commerce and is excellently discussed in Volume 32, page 225 of the Texas Law Review for December, 1953. This case involved the authority of the Arkansas Public Service Commission to require a Tennessee company, engaged exclusively in interstate commerce (but operating without authority from the Interstate Commerce Commission), to obtain a permit from said Commission before operating over Arkansas highways. In the course of its opinion the Court said:

"Here neither petitioners nor the drivers have obtained any kind of authority from the Interstate Commerce Commission. Indeed, petitioners whole case has been built on the premise that neither it nor its drivers must get a permit from the state or the national regulatory agency. In this situation our prior cases make clear that a state can regulate so long as no undue burden is imposed on interstate commerce, and that a mere requirement for a permit is not such a burden. . . ."

In the above case the Court by its decision approved the proposition urged by the Arkansas Commission, i.e., that registration with the Arkansas Commission for identification purposes was necessary to a proper application of the State's valid police, welfare, and safety regulations over motor carriers using its highways.

A review of the above authorities reflects that the police power of Texas may constitutionally extend to the three classifications of motor carrier operations contained in your specific questions. Your questions are each answered in the affirmative.

SUMMARY

Article 6701c-1 V.C.S., applies to all operations of commercial motor vehicles and truck-tractors, except to the operations therein specifically exempted, when the operator thereof is not the registered owner of such vehicle, or his agent, servant or employee, regardless of the character of the operation as being private or for hire, regulated or non-regulated, intrastate or interstate, and such application is not violative of the Interstate Commerce Clause of the Constitution of the United States.

Yours very truly,

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